

2023 Questionnaire of the 1st Study Commission IAJ-UIM

“The Effects of Remote Work on the Judicial Workplace and the Administration of Justice”

Answers of the German Judges Association

1) Remote work of judges in your country

a. Were judges permitted to work remotely in your country prior to and/or during the COVID-19 pandemic? If yes, please give examples (for example, studying cases at home; discussing cases with colleagues via videoconference applications or the telephone instead of personal meetings; holding hearings online via videoconferencing applications; etc.). Was technical equipment made available to the judges to enable them to work remotely?

Answer:

Judges were permitted to work remotely in Germany already before the pandemic. It has always been usual for many judges in Germany to study cases, conduct legal research or write judgements at home. Many – but not all – judges already had laptops with secure VPN connections that they could use for working at home as well as for working at at court where they could be inserted into a docking station in the judge’s office. Except for laptops, no technical equipment was made available for judges to enable them to work remotely. Using videoconferencing tools for interacting with colleagues was unusual in Germany before the pandemic, but became more common in some of the courts since then. What really changed significantly during the pandemic is that judges at civil courts started to actively conduct court sessions via videoconference. However, court proceedings cannot be conducted via video conference remotely in Germany. Judges still have to be present in the courtroom themselves in order to guarantee publicity. Thus this option did not contribute to the possibility of working remotely for judges, but only for lawyers.

b. What is the status of remote work by judges in your country now? Do many judges still work remotely in your country, and to what extent? (for example, all or just a certain percentage of judges? Only in certain fields of law or for certain types of cases? Only in lower courts or higher courts? etc.)

Answer:

Generally, more judges than before the pandemic work remotely on a regular basis. The extent differs, however. An approximate number or percentage cannot be given. Typically, most judges now work at home up to one or two days a week, while they work in the court building for the rest of the week. The extent to which judges can work remotely differs significantly between the instances and the availability of electronic filing. How often individual judges do work remotely depends on the number of hearings they have to attend – since court sessions still must be conducted in the court buildings even if they take place via videoconference –, the field of law they work in, and also the age of the judge. On the one hand, judges who are parents of younger children or who work part time tend to make use of the possibility to work remotely more often than judges who do not have children or whose children have grown up, since working remotely allows for more flexibility to take care of children’s needs and consumes less time for commuting. On the other hand, judges at higher instance courts tend to work remotely more often than judges at lower instance courts due to the difference of their work. Court Presidents, on the other hand, are generally expected to be physically present at court, so they generally do not work remotely to a significant extent.

2) Effect on judicial work

a. Did remote work change judicial work in general for better or worse – or both – in your country? Please give examples.

Answer:

Since working remotely was already possible – and usual – for judges before the pandemic, if to a smaller extent, no structural changes of the judicial work in Germany have occurred since the pandemic. The only noticeable difference is that now, as conducting court sessions via videoconference has become more frequent at the civil courts, more and more lawyers ask for this possibility. The main reason for this seems to be that taking part in a court session via videoconference allows a lawyer to attend more hearings per day all over the country and thus to generate more income. This puts those judges who prefer conducting a court session in person with the parties and their lawyers present at the courthouse under undue pressure. In our view it is a question of judicial independence that judges themselves may decide whether or not they regard a hearing via videoconference feasible, or whether or not they would prefer to see the parties and their lawyers and possible witnesses at court in person.

b. Does the remote work of judges have an impact on the judicial workplace in your country? Negative, positive or both? Please give examples.

Answer:

Due to the reasons set out above at 2. a. – working remotely was already usual in Germany before the pandemic, if to a smaller extent – there is not too strong an impact on the judicial workplace in Germany yet. On a positive note, the more accepted remote work of judges is, the easier it is to combine judicial work with private life such as with caring for children or elder relatives. As a negative consequence, however, the more judges work remotely at a court, the less communication there is between the judges in general. While it is easily possible to get in contact with colleagues via telephone or videoconference while working remotely, communication between colleagues is significantly less frequent, less spontaneous, and covers fewer topics. That consequence of remote work appears to be negative under different aspects. Regarding the workplace as such, regular communication between colleagues in person does contribute significantly to the social and psychological wellbeing of judges and other court staff. Personal communication at court is indispensable for a social environment in which judges and court staff do not just evaluate legal problems like a computer, but interact with anyone who is at court as a human being. More negative aspects that concern the administration of justice are covered below at question 3, effects on the administration of justice.

c. From your point of view, what future effects of remote work on the judicial workplace – negative, positive or both – can be expected?

Answer:

The enhanced possibility to work remotely is linked to technical progress and does have a positive effect in terms of flexible working conditions. Dangers of too much remote work are the possibility of isolation of judges and court staff and negative psychological consequences of the lack of personal exchange. The latter could affect negatively both the wellbeing of those work for the judiciary, and

the quality of judicial work. Thus remote work should be an option for judges, but not the rule, and certainly not be obligatory.

3) Effects on the administration of justice

a. What are the pros and cons of remote work on the administration of justice?

Answer:

A positive effect of remote work on the administration of justice could be the improved accessibility of courts in rural areas with long distances to travel. Furthermore, it could be easier to recruit qualified judges for courts in rural areas if they are enabled to work remotely some days a week, which can contribute to the quality of judicial work.

However, there are significant cons that should be considered carefully. On the long term the lack of personal interaction at courts could be negative for the quality of judicial work which relies heavily upon the discussion of legal opinions, upon the exchange of different views, and upon a regular exchange between more and less experienced judges. Less personal interaction between the judges at a court, as described above at question 2. b., could thus have a negative impact on the quality of judicial work, at least if remote work becomes the rule rather than the exception. Moreover, less personal interaction between judges and court users could also lead to a growing distance between judges and those who come to court. Having a hearing at a courthouse certainly makes a stronger impression on those who attend it than seeing other persons only on a small window in a computer screen.

Furthermore, in civil law it is common in Germany to evaluate with the parties the possibility to settle the case by an agreement. In fact, judges are legally obliged to encourage settlements in civil lawsuits in Germany. However, the practical experience of judges all over the country shows very clearly that people who face each other and the judge in person in a courtroom are much more likely to settle the case via agreement than those who take part in the hearing only remotely. In fact, some judges report that parties who are heard remotely are hardly ever willing to settle the case by an agreement. Settling a civil lawsuit by an agreement rather than a judgement often helps to prevent further lawsuits between the parties. If judges were to hear cases only remotely in civil law, this would have a dramatic effect in settling cases by agreement.

b. Does remote work have a positive or negative impact on the administration of justice in general in your country? Please give examples that include, but are not limited to, the quality of the administration of justice.

Answer:

So far, significant impacts on the administration of justice in general remain to be seen.

c. Are you aware of the public's perceptions of remote work by judges? Please give examples of positive or negative perceptions.

Answer:

Generally, while lawyers tend to prefer remote hearings in civil law, their parties tend to prefer to appear at court and speak up in person instead of via videoconference. Except for that we are not aware of specific perceptions of the public related to remote work of judges.

d. What are the positive and/or negative effects of holding remote hearings/conferences?

Answer: See question 3. a.

4) Remote work and judicial independence. Do you see any positive or negative effects of remote work on judicial independence? If yes, please give examples.

Answer:

Positive effects are that judges are able to do their reading and writing wherever they are and whenever they want without having to travel to a courthouse. That has a positive effect on judicial independence. However, a legal obligation for judges to conduct court hearings remotely would interfere significantly with the principle of judicial independence which requires that judges themselves can decide whether or not they find a certain case suitable for being heard remotely. It must be up to the judge to decide whether to see and hear the parties of a lawsuit or witnesses proceedings in person.

5) Limits on remote work for judges

a. Does your country place any limits on the remote work of judges (for example, limits on remote hearings in criminal cases)? If yes, please give examples.

Answer:

Remote hearings are not admitted in criminal cases in Germany so far. Apart from that, the only limit on remote work for judges is technical. To which extent judges can work remotely in Germany is determined chiefly by the availability of modern IT equipment, such as laptops with the possibility to conduct legal research in databases from at home, and the availability of electronic files which are not yet introduced in the same manner in all the fields of law and in all the parts of the country.

b. Are there any proposals to change rules or statutes in your country either to permit more, or to limit, remote work by judges?

Answer:

Yes, there is a proposal to oblige judges in civil law cases to conduct their hearings remotely if both parties apply so. In our view such an obligation interferes significantly with the principle of judicial independence.

c. Should there be any changes of rules or statutes in your country either to permit more, or to limit, remote work for judges?

No.

Proposal for 2024 topic:

Artificial Intelligence: Challenge for the Judiciary